

No. 11067

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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JAMES MILLER, JAKE AND MARJORIE  
CROPLEY, FRANK AND LILLY ED-  
WARDS, WILLIE PETERS, JIMMIE  
JACK, DAVID WILLARD, HERBERT  
MERCER, SUSIE MICHAELSON, MARY  
JOHNSON, LILLY YARQUAN, EDWARD  
N. AND CECILIA KUNZ, JENNIE  
KLANEY, JESSIE WILSON, JACOB YAR-  
KON, BESSIE VISAYA, JIMMIE K. HAN-  
SON, MARY GEORGE, PAUL RUDOLPH,  
WILLIAM KUNZ AND LILLY, HOOLIS,  
Appellants,

vs.

UNITED STATES OF AMERICA,  
Appellee.

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Transcript of Record

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Upon Appeal from the District Court for the  
Territory of Alaska, Division Number One

FILED

AUG 14 1945



No. 11067

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Circuit Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## ATTORNEYS OF RECORD

WILLIAM L. PAUL, JR.

Box 81

Juneau, Alaska

Counsel for Defendants-Appellants.

R. L. TOLLEFSEN,

Assistant U.S. Attorney,

Juneau, Alaska.

In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

No. 4940-A

UNITED STATES OF AMERICA,

Plaintiff,

vs.

10.95 acres of land in Juneau, Juneau Recording  
Precinct, First Judicial Division, Alaska; D.  
B. and Louise Femmer; Julius and Anna Beh-  
rends; Tom and Maude Dull; Karl and Olga  
Aschenbrenner; Steve and Annie Stanworth;  
George and Lena Alfors; Anna Rosenberg; D.  
E. and Genevieve Fuller; Dolly Knudsen;  
Johnny Knudsen; Herb Knudsen; the B. M.  
Behrends Bank, A Corporation, Mortgagee,  
and also all unknown heirs of any parties de-  
fendant now deceased, and also all persons or  
parties unknown claiming any right, title,  
estate or interest in and to the real property  
described herein,

Defendants.

### THIRD AMENDED PETITION FOR CONDEMNATION

To the Honorable George F. Alexander, Judge of  
The District Court, Territory of Alaska, Divi-  
sion Number One at Juneau:

Comes now the United States of America, the  
Petitioner herein, by R. L. Tollefsen, Assistant  
U.S. Attorney in and for the First Division, Ter-



ritory of Alaska, acting under instructions of the Attorney General of the United States, pursuant to request of the Secretary of War, and represents unto the Court as follows:

First: This petition is filed under the authority of the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 518; 50 U.S.C. sec 171), and March 27, 1942, (Public Law 507-77th Congress), which acts authorize the acquisition of real and personal property for military or other war purposes, and the Act of Congress approved April 28, 1942 (Public Law 528-77th Congress), which act appropriated funds for such purposes.

Second: Pursuant to the authority and provisions of the acts aforesaid, the Secretary of War has determined that, in his opinion, it is necessary and advantageous to acquire, and has selected for acquisition by the United States of America, the parcel of land at Juneau, Alaska, hereinafter described with certain personal property located upon a portion of said land, for use in connection with the construction of wharfage facilities for the Juneau Subport of [1\*] Embarkation, and for such other purposes as may be hereafter authorized by Congress or by executive order. In the opinion of the Secretary of War, the exclusive use of the aforesaid real and personal property is required for the purposes stated in aid of the national defense, and it is necessary, vital, advantageous and

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

in the interest of the United States that the exclusive use of said real and personal property be acquired by judicial proceedings as authorized by the foregoing acts of Congress.

Third: The perimeter description of the land, the exclusive use of which is required as aforesaid, is as follows:

Beginning at a point which bears South 21 degrees 54 minutes West 152.49 feet from boundary corner No. 11 shown on Plat of U.S. Survey No. 7, "Townsite of Juneau," surveyed April 11 to June 2, 1892, by George W. Garside and certified by Orville T. Porter, ex-officio U.S. Surveyor General for the District of Alaska, November, 1892, running South 8 degrees 57 minutes West 175 feet; thence South 81 degrees 3 minutes East 10 feet; thence South 8 degrees 57 minutes West 217 feet; thence South 66 degrees 13 minutes West 638 feet; thence North 23 degrees 47 minutes West 525 feet; thence North 52 degrees 51 minutes East 550 feet; thence South 37 degrees 9 minutes East 16 feet; thence North 48 degrees 40 minutes East 184 feet; thence South 45 degrees 30 minutes East 347 feet; thence South 21 degrees 59 minutes 8 second East 34.56 feet to the point of beginning, containing 10.95 acres, more or less, in Juneau Recording District, First Judicial Division, Territory of Alaska aggregating 10.95 acres more or less, together with all improvements thereon and apputenances thereunto belonging, as shown on the photostatic copy of plat marked "Exhibit A", attached to and made a part of the original petition in this cause.

Fourth: The interest sought to be condemned is a fee simple title to said land, including the land under the water, subject however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, but subject to no other liens, interests, charges, easements, or rights whatsoever.

Fifth: The personal property sought to be condemned is all the personal property located upon or used in connection with that portion of the aforementioned land described as follows:

Tract No. ATS-1

Starting at a point where the Southeast boundary of West Third Street intersects the Southeast boundary of Willoughby Avenue; thence South 45 degrees 30 minutes East 297 feet, more or less, to the point of beginning; thence South 45 degrees 30 minutes East 50 feet; thence South 21 degrees 59 minutes 8 seconds East 34.56 feet; thence South 8 degrees 57 minutes West 175 feet; thence South 81 degrees 3 minutes East 10 feet; thence South 8 degrees 57 minutes West 217 feet; thence South 66 degrees 13 minutes West 206 feet; thence North 23 degrees 47 minutes West 250 feet; thence North 45 degrees 30 minutes East 425 feet to the point of beginning, containing 2 acres, more or less, in Juneau Recording District, First Judicial Division, Territory of Alaska. [2]

and said personal property shall include, but not be limited to, those of the following enumerated

items which are personal property as a matter of law:

One warehouse 52' x 103' of board and batten construction with galvanized iron roof; one warehouse 50' x 62' of board and batten construction with composition roof; one storehouse 16' x 28' of board and batten construction with composition roof; one wharf in an "L" shape approximately 40' x 225' and 20' x 150'; approximately 85,000 cubic yards of rockfill; one cabin 30' x 25' of frame construction; one gasoline tank of 700 gallons capacity; one gasoline tank of 500 gallon capacity; and two gasoline pumps;

Sixth: The interest sought to be condemned in said personal property is the full and complete title thereto, free and clear of all liens, interests, charges, claims and rights whatsoever.

Seventh: That the land aforesaid consists of tidelands, title to which is now, and at all times has been, in the United States; that the defendants or their predecessors in interest have entered upon said land, erected improvements thereon, and claimed the right to use and occupy the said land; that such acts, as against the United States, have been and are without authority of law, save and except as to the wharf of the defendants Femmer, which was erected under a revocable permit from the United States; that, with the possible exception of said wharf, the United States by virtue of its sovereignty became and is now the owner of all of the improvements placed upon said land and en-

titled to the exclusive possession thereof without payment of compensation.

Eighth: So far as known or on diligent inquiry can be ascertained, the following parties have or claim some interest in said real and personal property:

D. B. and Louise Femmer, Juneau, Alaska  
Julius and Anna Behrends, Juneau, Alaska  
Tom and Maude Dull, Juneau, Alaska  
Karl and Olga Aschenbrenner, Juneau, Alaska  
Steve and Annie Stanworth, Juneau, Alaska  
George and Lena Alfors, Juneau, Alaska  
Anna Rosenberg, Juneau, Alaska  
D. E. and Genevieve Fuller, Juneau, Alaska  
Dolly Knudsen, Juneau, Alaska  
Johnny Knudsen, Juneau, Alaska  
Herb Knudsen, Juneau, Alaska  
The B. M. Behrend Bank, a Corporation, Mortgagee, Juneau, Alaska

and also all unknown heirs of any parties defendant now deceased, and all persons or parties unknown claiming any right, title, estate or interest in and to the real property described herein, all of whom are made defendants herein, and it is the desire of the United States of America to acquire all the right, title, or interest the above-named defendants have or may have in and to the real and personal property herein described. [3]

Ninth: That the B. M. Behrends Bank is a domestic corporation, duly organized and existing under and by virtue of the laws of the Territory of Alaska, home office Juneau, Alaska.



Tenth: The Attorney for the Petitioner herein further respectfully represents to the Court that the Secretary of War has determined that as the real and personal property is to be used in connection with the army transport service and the expansion of a military garrison and the utmost haste in expediting this project is vital to the successful prosecution of the war, immediate possession is necessary; that under and pursuant to the terms of the Second War Powers Act, approved March 27, 1942, (Public Law 507-77th Congress), the United States has a right to take immediate possession herein of the land herein described; and that certain adequate provision has been made for the payment of just compensation to the party or parties entitled thereto for the real and personal property, hereinsought to be condemned, by an appropriation of funds of the United States of America under an Act of Congress approved April 28, 1942, (Public Law 528-77th Congress).

Wherefore, Your Petitioner Prays that said defendants be required to set forth the nature of their several claims, that the court ascertain and determine the validity of such claims and the compensation, if any, to which the defendants or any of them may be entitled; that the Court declare and adjudge that plaintiff is the owner in fee simple of said real and personal property, together with the improvements on the land; that each and every one of the defendants be forever debarred from asserting any claims whatever for compensation for said real and personal property, or any

right, title, or interest therein; and for such other and further relief as may be proper.

UNITED STATES OF  
AMERICA

By R. L. TOLLEFSEN

Assistant U. S. Attorney,  
First Division of Alaska.

United States of America,  
Territory of Alaska,  
Division Number One—ss.

R. L. Tollefsen, being first duly sworn on oath, deposes and says:

That he is Assistant U.S. Attorney for the First Division, Territory of Alaska, and brings this suit by direction of the Attorney General of the United States; that he has read the foregoing petition, knows the contents thereof, and believes the same to be true.

R. L. TOLLEFSEN

Assistant U.S. Attorney

Subscribed and sworn to before me this 3rd day of April, 1944.

P. D. E. McIVER

Deputy Clerk of U. S. Dis-  
trict Court.

[Endorsed]: Filed April 3, 1944. [4]

[Title of District Court and Cause.]

### ANSWER AND CLAIM

Come now James Miller, Peter Smith, Jake and Marjorie Cropley, Frank and Lilly Edwards, Willie Peters, Jimmie Jack, David Willard, Herbert Mercer, Susie Michaelson, Mary Johnson, Lilly Yarquan, Edward N. and Cecelia Kunz, Jennie Klaney, Jessie Wilson, Jacob Yarkon, Bessie Visaya, Jimmie K. Hanson, Mary George, Paul Rudolph, William Kunz and Lilly Hoolis and answering Plaintiff's Third Amended Petition for Condemnation admit, deny, allege and claim as follows:

#### I.

The above-named claimants admit the material allegations in Paragraph First, Second, Third, Fourth, Fifth and Sixth of the said Third Amended Petition for Condemnation.

#### II.

The said claimants deny the material allegations of Paragraphs Seventh and Eighth of said Third Amended Petition for Condemnation.

#### III.

The said claimants admit Paragraph Ninth of said Amended Petition for Condemnation.

#### IV.

The said claimants deny the allegations in Paragraph Tenth of said Third Amended Petition for Condemnation which allege that certain adequate



provision has been made for the payment of just compensation to the parties thereto entitled of the real and personal property therein sought to be condemned; and said claimant admit the balance of material allegations in said Paragraph Tenth.

### Affirmative Defense and Claim

#### V.

Ever since the year 1867, and from time immemorial prior thereto, said claimants, being Tlingit Indians of Alaska, and their predecessors and successors [5] in lineal consanguinity, under the laws, customs and usages of the Tlingit Indians of Alaska and in conformity with the laws of the United States, during all the times herein mentioned, have been, and now are the aboriginal users and occupants of, and in the exclusive possession of, and entitled to the exclusive possession of the land, submerged land and water described as follows, namely:

Commencing at Corner No. 18, according to the Plat of U.S. Survey No. 574 as surveyed by C. E. Davidson, May 17-21, 1905, and certified by the Surveyor General of the United States on January 18, 1907; thence west northwesterly to Corner No. 5 of said U.S. Survey No. 574; thence S 61 deg. 32 min. W 2.83 chains to corner No. 6 of said Survey No. 574; thence S 23 deg 23 min E. .86 chains to corner No. 7; thence to corner No. 8; thence N 26 deg 51 min W 58 feet to corner No. 9; thence S 66 deg 39 min W 36.6 feet to corner No. 10; thence S 81 deg 32 Min W .88 chains to corner No. 11;

thence N 64 Deg 52 Min W 1.36 chains to corner No. 12; thence N 46 Deg 32 Min W 49.8 feet to corner No. 13; thence S 58 Deg 21 Min W 64.7 feet to corner No. 14; thence S 21 Deg 03 Min E 96 feet to corner No. 15; thence S 66 Deg 42 Min W 21 feet to Corner No. 16; thence S 16 deg. 51 Min. E 1.64 chains to corner No. 17;

Thence southerly in a straight line to Corner No. E of the U.S. Engineer Office's plat of Juneau Port Expansion Real Estate Acquisitions, dated September 28, 1942, being the same plat referred to in said Third Amended Petition for Condemnation; thence to Corner No. D of said plat; thence north-easterly to the northern-most corner of D. B. Femmer warehouses;

Thence in a north-northeasterly direction in a straight line to Corner No. 18 of the said U.S. Survey No. 574, the place of beginning.

## VI.

Said use and occupancy, possession and right of possession by said claimants of said area, during all the times herein mentioned have not been condemned, expropriated, extinguished, modified, impaired or encumbered by any person, corporation or body politic, during any of the times herein mentioned, within the Constitution and Laws of the United States, until plaintiff filed its first Petition for Condemnation herein to a limited portion of said area.

## VII.

Said claimants do hereby expressly waive any interest or claim to the following described area, to-wit:

Beginning at the point of intersection of the southerly boundary of West Third Street and the westerly boundary of Willoughby Avenue; thence south 45 deg. 30 min. east 297 feet; thence south 45 degrees 30 minutes west, 160 feet; thence north 45 degrees 30 minutes west, 79 feet; thence north 45 degrees 30 minutes east 103 feet; thence north 45 degrees 30 minutes west 218 feet to the southerly boundary of West Third Street; thence north-easterly along said southerly boundary of west third street, 57 feet to place of beginning.

## VIII.

The plaintiff on September 19, 1942, filed its first Petition for Condemnation to the land therein sought to be condemned and within the area described [6] in Paragraph V herein; that plaintiff has paid no money into court, nor offered to pay any money, for the said area said plaintiff seeks to condemn.

## IX.

Claimants have been damaged by plaintiff's condemnation and taking of said lands described in its Third Amended Petition for Condemnation by the loss of the value of said lands, by interest at the rate of six per cent per annum from September 19, 1942, until plaintiff either pays the said claimants or pays the amount of the value of said lands

into court, and by the amount that the contiguous lands, owned by said claimants and described in Paragraph V herein, have been reduced in value by the taking and condemnation of lands described in plaintiff's Third Amended Petition for Condemnation, in the total sum of Eighty Thousand Dollars (\$80,000).

Wherefore claimants pray for judgment against plaintiff in the sum of Eighty Thousand Dollars (\$80,000).

WILLIAM L. PAUL JR.,

and

FREDERICK PAUL,

Attorneys for said Claimants.

By WILLIAM L. PAUL JR.

Of Counsel.

United States of America,  
Territory of Alaska—ss.

I, Edward N. Kunz, upon being first duly sworn, on oath depose and say: That I am one of the claimants and defendants named in the foregoing Answer and Claim, that I have read the foregoing Answer and Claim, know the contents thereof and the same is true as I verily believe.

EDWARD N. KUNZ

Subscribed and sworn to before me this 26th day of July, 1944.

[Seal]

WILLIAM L. PAUL JR.

Notary Public for Alaska. My Commission expires 1/19/48.

Copy received this 27th day of July, 1944.

R. L. TOLLEFSEN,

Asst. U.S. Attorney.

[Endorsed]: Filed July 27, 1944. [7]

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[Title of District Court and Cause.]

DEMURRER TO ANSWER AND CLAIM OF  
DEFENDANTS JAMES HILLER, ET AL.

Comes now the United States of America, plaintiff herein, and demures to the Answer and Claim of the defendants James Miller, et al, on the grounds that it appears upon the face thereof that the matters alleged in said Answer and Claim do not constitute a defense because it appears on the face of said Answer and Claim that the said defendants do not have such an interest in the property sought to be condemned as would entitle them to compensation.

Dated at Juneau, Alaska, this 28th day of July, 1944.

UNITED STATES OF  
AMERICA

By: R. L. TOLLEFSEN

Assistant U.S. Attorney.

Service acknowledged and copy received this 28th day of July, 1944.

FREDERICK PAUL

Of Counsel for defendants James Miller, et al.

[Endorsed]: Filed July 28, 1944. [8]



[Title of District Court and Cause.]

### OPINION

This case is before the Court on Plaintiff's Demurrer to the Answer and Claim of the Defendants James Miller, et al, to Plaintiff's Third Amended Petition for Condemnation.

The questions raised are two:

First: Can said defendants and interpleaders plead "Indian Title" or "Aboriginal Rights", as against the United States Government?

Second. Do such interpleaders allege to have any compensable interest as against the United States?

To both question we are obliged to answer in the negative. We know of no authorities that sustain their position, and none have been cited to us. On the contrary, all of the authorities seem to sustain the opposite view.

It is a well established legal principle that the United States cannot be divested of title to its lands by adverse possession, which is the basis of the interpleaders' claim here. This principle is so well settled that it needs no citation of authority. In fact there are no authorities to the contrary. And since the defendants here base their entire claims to title on adverse possession under "Indian Title" or "Aboriginal Rights", they are without basis or validity here.

I could write a long and voluminous opinion in this case, with numerous citations explaining the nature and limitations of so-called "Indian Title"

and [9] “Aboriginal Rights”, but I see no point in doing so, as all of these matters have been decided by our own Court of last resort—The Supreme Court of the United States—and to do so would be simply repeating what has already been said by The Supreme Court of the United States.

The Demurrer of Plaintiff will, therefore, be sustained, and it is so ordered.

Dated this 9th day of March, 1945, at Juneau, Alaska.

GEO. F. ALEXANDER

Judge.

[Endorsed]: Filed March 9, 1945. [10]

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[Title of District Court and Cause.]

### ORDER SUSTAINING DEMURRER

This matter came on to be heard at this term of Court on the demurrer of Plaintiff to the Answer and Claim of the Defendants, James Miller, et al., and the Court having considered same, having heard argument by counsel for Plaintiff and the Defendants, and having on the 9th day of March, 1945, handed down its written opinion in this matter.

Does Hereby Order that the Plaintiff's Demurrer to the Answer and Claim of the Defendants, James Miller, Peter Smith, Jake and Marjorie Copley, Frank and Lilly Edwards, Willie Peters, Jimmie Jack, David Willard, Herbert Mercer, Susie

Michaelson, Mary Johnson, Lilly Yarquan, Edward N. and Cecelia Kunz, Jennie Klaney, Jessie Wilson, Jacob Yarkon, Bessie Visaya, Jimmie K. Hanson, Mary George, Paul Rudolph, William Kunz and Lilly Hoolis, be and the same is hereby sustained.

To which order the Defendants except and the exception is allowed.

Done in open Court this 16th day of March, 1945.

GEO. F. ALEXANDER

District Judge.

O.K.

FREDERICK PAUL

of Counsel for Claimants

James Miller et al.

O.K.

R. L. TOLLEFSEN,

Asst. U.S. Atty.

Entered Court Journal No. 16, pages 421-422.

[Endorsed]: Filed March 16, 1945. [11]



In the District Court for the Territory of Alaska  
Division Number One, at Juneau.

No. 4940-A

UNITED STATES OF AMERICA,

Plaintiff

vs.

10.95 Acres of land in Juneau, Juneau Recording  
Precinct, First Judicial Division, Alaska, D.  
B. Femmer, et al.,

Defendants

### FINAL JUDGMENT

This matter came on for hearing at this Term of Court on the motion of plaintiff, by R. L. Tollefsen, Assistant United States Attorney, for the entry of final judgment in this cause, and the Court having considered same and being fully advised in the premises, finds:

One: That this proceeding is instituted by the United States of America for the purpose of acquiring the real and personal property described in the Third Amended Petition, under authority of the Acts of Congress set out in said petition.

Two: That the Secretary of War has duly selected the said property for acquisition by the United States in connection with the Juneau Sub-Port of Embarkation.

Three: That the purpose for which said property is sought to be condemned is a public use, namely, for military purposes; that the property

is necessary for such use; and that the United States has the right to acquire said property for such purposes.

Four: That the following described land is a part of the land described in the Third Amended Petition and sought to be condemned herein:

That certain tract or parcel of land in the City of Juneau, Juneau Recording District, First Judicial Division, Territory of Alaska, described as follows:

Beginning at a point which bears South 21 degrees 54 minutes West 152.49 feet from the boundary corner No. 11 shown on Plat of U.S. Survey No. 7, "Townsite of Juneau," surveyed April 11 to June 2, 1892, by George W. Garside and certified by Orville T. Porter, ex-officio U.S. Surveyor General for the District of Alaska, November, 1892, running South 8 degrees 57 minutes West 175 feet; thence South 81 degrees 3 minutes East 10 feet; thence South 8 degrees 57 minutes West 217 feet; thence South 66 degrees 13 minutes West 638 feet; thence North 23 degrees 47 minutes West 525 feet; thence North 52 degrees 51 minutes East 550 feet; thence South 37 degrees 9 minutes East 16 feet; thence North 48 degrees 40 minutes East 127 feet to a point which is South 48 degrees 40 minutes west of the point of intersection of the [12] southerly boundary of West Third Street and the Southerly boundary of Willoughby Avenue; thence South 45 degrees 30 minutes East 218 feet; thence South 45 degrees 30 minutes West 103 feet; thence South 45

degrees 30 minutes East 79 feet; thence North 45 degrees 30 minutes East 160 feet; thence South 45 degrees 30 minutes East 50 feet; thence South 21 degrees 59 minutes 8 seconds East 34.56 feet to the point of beginning.

Five: That plaintiff alleged in Paragraph Seventh of its Third Amended Petition that it was the owner of said land.

Six: That said land is within the jurisdiction of this Court and all parties, known or unknown, having or claiming any right, estate, or interest therein have been duly and properly served with summons, personally or by publication.

Seven: That the only persons appearing in this cause and claiming an interest in said land are the defendants D. B. and Louise Femmer, the B. M. Behrends Bank, and the defendants, James Miller, Peter Smith, Jake and Marjorie Copley, Frank and Lilly Edwards, Willie Peters, Jimmie Jack, David Willard, Herbert Mercer, Susie Michaelson, Mary Johnson, Lilly Yarquan, Edward N. and Cecelie Kunz, Jennie Klaney, Jessie Wilson, Jacob Yarkon, Bessie Visaya, Jimmie K. Hanson, Mary George, Paul Rudolph, William Kunz and Lilly Hoolis.

Eight: That full compensation has been paid herein for the interests of the defendants, D. B. and Louis Femmer and B. M. Behrends Bank, and all claims of said defendants have been fully satisfied and discharged.

Nine: That by order entered herein on March 16, 1945, the plaintiff's demurrer to the Answer

and Claim of the defendants, James Miller, et. al., was sustained for the reason that said Answer and Claim did not allege a compensable interest in the land to be in the defendants; and the said defendants have elected to stand on the allegations of their said Answer and Claim.

Now, Therefore, It Is Ordered, Adjudged and Decreed:

First: That title to the above described land is in the plaintiff, the United States of America, and was in the plaintiff at the time this proceeding was instituted.

Second: That the defendants, James Miller, Peter Smith, Jake and Marjorie Copley, Frank and Lilly Edwards, Willie Peters, Jimmie Jack, David Willard, Herbert Mercer, Susie Michaelson, Mary Johnson, Lilly Yarquan, Edward N. and Cecelia Kunz, Jennie Klaney, Jessie Wilson, Jacob Yarkon, Bessie Visaya, Jimmie K. Hanson, Mary George, Paul Rudolph, William Kunz and Lilly Hoolis, have no right, estate or compensable interest in said land, as against the plaintiff. [13]

Third: That title to said lands be and the same is hereby quieted in the plaintiff, the United States of America, against all claims, right, title or interest whatsoever, of any of the defendants, named, or unknown.

Fourth: That none of the defendants, named or unknown, shall have or receive any compensation for the taking of said lands, excepting the defendants D. B. and Louise Femmer and the B. M. Behrends Bank who shall receive the compensation

awarded them by judgment entered herein on April 3, 1944.

Fifth: That the unencumbered and absolute title in fee simple in and to the above described land, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, is vested in the United States of America, free and discharged of any and all charges, interests, claims, liens and encumbrances of any kind and character whatsoever.

Done in Open Court this 20th day of March, 1945.

GEO. F. ALEXANDER

District Judge.

Copy received 3/17/45. Okay as to Form.

WM. L. PAUL, Jr.,

Attorney for Plaintiff.

O.K.

R. L. TOLLEFSEN,

Asst. U. S. Attorney

Entered Court Journal. No. 16, pages 426-427-428. [14]

[Endorsed]: Filed March 20, 1945.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that the defendants James Miller, Jake and Marjorie Cropley, Frank and Lilly Edwards, Willie Peters, Jimmie Jack, David



Willard, Herbert Mercer, Susie Michaelson, Mary Johnson, Lilly Yarquan, Edward N. and Cecelia Kunz, Jennie Klaney, Jessie Wilson, Jacob Yarkon, Bessie Visaya, Jimmie K. Hanson, Mary George, Paul Rudolph, William Kunz and Lilly Hoolis hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order sustaining plaintiff's demurrer to said defendant's Answer and Claim on March 16, 1945, and from the final judgment against said defendant's Answer and Claim on March 20, 1945.

WILLIAM L. PAUL JR. &  
FREDERICK PAUL

Attorneys for Defendants.

By: WILLIAM L. PAUL JR.

Of Counsel.

Receipt of a copy of the within Petition for Appeal, Assignment of Error, and Notice of Appeal in the above-entitled cause acknowledged this 23rd day of March, 1945.

ROBERT L. JERNBERG

Of Counsel for Plaintiff.

[Endorsed]: Filed March 23, 1945. [15]

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[Title of District Court and Cause.]

### PETITION FOR APPEAL

This Court having entered its memorandum opinion on March 9, 1945 and order sustaining plaintiff's demurrer to the Answer and Claim of

James Miller, et al., on March 16, 1945; and said defendants James Miller, et al., by their attorneys, having given notice in open Court to stand on the allegations of their said Answer and Claim and to refuse to plead over; and this Court having entered Final Judgment on said Answer and Claim on March 20, 1945, and

The defendants James Miller, Peter Smith, Jake and Marjorie Cropley, Frank and Lilly Edwards, Willie Peters, Jimmie Jack, David Willard, Herbert Mercer, Susie Michaelson, Mary Johnson, Lilly Yarquan, Edward N. and Cecelia Kunz, Jennie Klaney, Jessie Wilson, Jacob Yarkon, Bessie Visaya, Jimmie K. Hanson, Mary George, Paul Rudolph, William Kunz and Lilly Hoolis, conceiving themselves aggrieved by the opinion and order and judgment set forth above, do hereby appeal from the said order and final judgment to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order and judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit; and that the appeal bond be fixed at \$250.00.

WILLIAM L. PAUL JR. &  
FREDERICK PAUL

Attorneys for Defendants.

By: WILLIAM L. PAUL, JR.,  
Of Counsel.

## ORDER

The foregoing claim of appeal is allowed, and appeal bond fixed at \$250.00. Done this 28th day of March, 1945, at Juneau, Alaska.

GEO. F. ALEXANDER

U. S. District Judge.

Entered Court Journal No. 16 Page 446. [16]

[Endorsed]: Filed March 23, 1945.

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[Title of District Court and Cause.]

## ASSIGNMENT OF ERRORS

The defendants James Miller et al., hereby assign the error asserted and intended to be urged as follows:

## 1.

That the Court was in error in sustaining plaintiff's demurrer to said defendants' Answer and Claim by order dated March 16, 1945, on the ground that said defendants cannot acquire title to tide-lands by adverse possession in any manner against plaintiff, and as a consequence thereof entering final judgment against said defendants completely denying their Answer and Claim on March 20, 1945.

Wherefore said defendants pray that the said final judgment of March 20, 1945, of the District Court for the Territory of Alaska, First Judicial Division, together with the order of March 16,



1945, sustaining said demurrer, may be reversed, and that said Court may be ordered to enter a decree overruling said demurrer, or in such other form as to the Circuit Court of Appeals for the Ninth Circuit shall seem just.

WILLIAM L. PAUL JR. &  
FREDERICK PAUL

Attorneys for Defendants.

By: WILLIAM L. PAUL JR.  
Of Counsel.

[Endorsed]: Filed March 23, 1945. [17]

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[Title of District Court and Cause.]

### COST BOND ON APPEAL

Know All Men by These Presents, we, Bessie Visaya, one of the defendants making the appeal in the above-entitled cause, for herself and on behalf of the other said defendants, as principal, and Charles Waynor, as surety, are held and firmly bound unto the United States of America in the full and just sum of Two Hundred Fifty Dollars to be paid to the United States of America; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 29th day of March, 1945.

Whereas, lately at the District Court for the Territory of Alaska, First Judicial Division, at

Juneau, in a suit pending in said Court between the above-named plaintiff and said defendants, a judgment was rendered against the said defendants, and the said defendants having filed in said court a notice of appeal, petition for allowance of appeal, and assignment of errors to reverse the judgment in the aforesaid suit on appeal to the United States Circuit Court of Appeals to be holden at San Francisco, State of California, on the..... day of....., 1945.

Now, the condition of the above obligation is such, that if the said defendants shall prosecute their appeal to effect, and satisfy the judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or if judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest and damages as the appellate court may adjudge and award, if they fail to make good their plea, then the above obligation is void; else to remain in full force and virtue.

BESSIE VISAYA  
CHARLES WAYNOR

Acknowledged before me the day and year first above written.

[Notarial Seal] WILLIAM L. PAUL, JR.

Notary Public for Alaska

My Commission expires Jan 19, 1948. [18]

Notary Public for Alaska.

My Commission expires Jan 19, 1948.

Copy Received April 7, 1945.

R. L. TOLLEFSEN

Of Counsel for Plaintiff.

Bond approved this April 10th, 1945.

GEO. F. ALEXANDER

U. S. District Judge.

Entered Court Journal No. 16 Page 463. [19]

[Endorsed]: Filed April 10, 1945.

United States of America,

Territory of Alaska

First Judicial Division—ss.

Charles Waynor, of Juneau, Alaska, being first duly sworn, on oath deposes and says that he is a freeholder in said district and is worth the sum of Five Hundred Dollars, exclusive of property exempt from execution and over and above all debts and liabilities.

[Seal] CHARLES WAYNOR

Subscribed and sworn to before me this 29th day of March, 1945.

[Notarial Seal] WILLIAM L. PAUL, JR.

[Title of District Court and Cause.]

CITATION ON APPEAL

The President of the United States to the Above-Named Plaintiff-Appellee, by R. L. Jernberg, Acting U. S. Attorney for the First Division, Territory of Alaska, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco in the State of California, within 40 days from the date of this writ, pursuant to an appeal filed in the Clerk's Office of the District Court for the Territory of Alaska, First Judicial Division, wherein the appellants-defendants James Miller, Peter Smith, Jake and Marjorie Cropley, Frank and Lilly Edwards, Willie Peters, Jimmie Jack, David Willard, Herbert Mercer, Susie Michaelson, Mary Johnson, Lilly Yarquan, Edward N. and Cecelia Kunz, Jennie Klaney, Jessie Wilson, Jacob Yarkon, Bessie Visaya, Jimmie K. Hanson, Mary George, Paul Rudolph, William Kunz and Lilly Hoolis are complainants, and the above-entitled plaintiff-appellee is defendant, to show cause, if any there be, why the judgment in such appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable Geo. F. Alexander, Judge

of the District Court for the Territory of Alaska,  
First Division, at Juneau, this 10 day of Apr., 1945.

[Seal]

GEO. F. ALEXANDER

U. S. District Judge.

Copy Received

R. L. TOLLEFSEN

Of Counsel for Appellee.

Entered Court Journal No. 16 Page 464. [20]

[Endorsed]: Filed Apr. 10, 1945.

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[Title of District Court and Cause.]

PRAECIPE DESIGNATING PARTS OF  
RECORD.

To the Clerk:

You are requested to take a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, pursuant to an appeal allowed in the above-entitled cause and to include in such transcript of record the following and no other papers or exhibits, to-wit:

1. Third Amended Petition for Condemnation filed April 3, 1944.
2. Answer and Claim filed July 27, 1944.
3. Demurrer filed July 28, 1944.
4. Opinion filed March 9, 1945.
5. Order on demurrer filed March 16, 1945.
6. Final Judgment filed March 20, 1945.
7. Notice of Appeal filed March 25, 1945.

8. Petition for Appeal and Order filed March 23, 1945.

9. Assignment of Errors filed March 23, 1945.

10. Cost Bond on Appeal filed April 7, 1945.

11. Citation on Appeal and Return filed April 10, 1945.

12. This praecipe.

WILLIAM L. PAUL JR. &  
FREDERICK PAUL

Attorneys for Appellant.

By WM. L. PAUL JR.

Of Counsel.

Copy received 4-27-45.

R. L. TOLLEFSEN

Of Counsel for Plaintiff-  
Appellee.

[Endorsed]: Filed Apr. 27, 1945. [21]

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[Title of District Court and Cause.]

COUNTER-DESIGNATION OF PARTS OR  
RECORD

To the Clerk of the District Court, Territory of  
Alaska, Division Number One:

You are requested to include in the transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, pursuant to the appeal in this cause of the defendants James Miller, et al, the following papers in addition to the papers



designated by appellants in praecipe filed on April 27, 1945:

1. Petition for Condemnation, filed September 9, 1942.
2. This Counter-Designation of Parts of the Record.

Done at Juneau, Alaska, this 15th day of May, 1945.

R. L. TOLLEFSEN

Assistant United States

Attorney,

Attorney for Plaintiff-

Appellee

Copy received this 15th day of May, 1945

WILLIAM L. PAUL JR.

Of Counsel for Defendants-

Appellants

[Endorsed]: Filed May 15, 1945. [22]

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[Title of District Court and Cause.]

PETITION FOR CONDEMNATION AND  
IMMEDIATE POSSESSION

To the Honorable George F. Alexander, Judge of  
the District Court, Territory of Alaska, Division  
Number One at Juneau:

The petitioner herein, by Wm. A. Holzheimer,  
United States Attorney in and for the First Division,  
Territory of Alaska, acting under and by

virtue of instructions of the Attorney General of the United States, pursuant to request of the Secretary of War, and represents unto the Court as follows:

First: This petition is filed under the authority of and in pursuant to the following Acts of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), April 11, 1918 (40 Stat. 518; 50 U.S.C. sec. 171), and March 27, 1942 (Public Law 507 77th Congress), which acts authorize the acquisition of land for military or other war purposes, and the Act of Congress approved April 28, 1942 (Public Law 528-77th Congress).

Second: Pursuant to the authority and provisions of the Acts aforesaid, the Secretary of War has determined and selected for acquisition by the United States of America, the parcel of land hereinafter described for the establishment, development, for wharfage facilities in connection with the Juneau, Alaska Sub-Port of Embarkation and for such other purposes as may be hereafter authorized by Congress or Executive Order. The parcel of land is necessary for the purposes aforesaid in the aid of national defense in the Opinion of the Secretary of War. In the opinion of the Secretary of War, it is necessary, vital, advantageous, and in the interest of the United States that said parcel of land be acquired by judicial proceedings, as authorized by the Act of Congress [23] approved April 28, 1942 (Public Law 528-77th



Congress) and the Act of Congress approved March 27, 1942 (Public Law 507-77th Congress).

Third: The land sought to be acquired in this proceeding is described as follows:

### EXHIBIT "A"

#### Perimeter Description

Beginning at a point which bears South 21 degrees 54 minutes West 152.49 feet from boundary corner No. 11 shown on Plat of U. S. Survey No. 7, "Townsite of Juneau," surveyed April 11 to June 2, 1892, by George W. Garside and certified by Orville T. Porter, ex-officio U. S. Surveyor General for the District of Alaska, November, 1892, running South 8 degrees 57 minutes West 175 feet; thence South 81 degrees 3 minutes East 10 feet; thence South 8 degrees 57 minutes West 217 feet; thence South 66 degrees 13 minutes West 638 feet; thence North 23 degrees 47 minutes West 525 feet; thence North 52 degrees 51 minutes East 550 feet; thence South 37 degrees 9 minutes East 16 feet; thence North 48 degrees 40 minutes East 184 feet; thence South 45 degrees 30 minutes East 347 feet; thence South 21 degrees 59 minutes 8 seconds East 34.56 feet to the point of beginning, containing 10.95 acres, more or less, in Juneau Recording District, First Judicial Division, Territory of Alaska.

The aggregate area to be taken containing 10.95 acres, more or less.

together with all improvements thereon and appurtenances thereunto belonging, as shown by the photostatic copy of Plat marked Exhibit "A" attached hereto and made a part hereof.

Fourth: The interest sought to be condemned is a fee simple title, including the land under the water, subject, however, to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines; but subject to no other liens, interest, charges, easements, or rights whatsoever.

Fifth: So far as known or on diligent inquiry can be obtained, the apparent interests or presumptive owners of the above-described land are:

D. B. and Louise Femmer, General Delivery, Juneau, Alaska

Julius and Anna Behrends, General Delivery, Juneau, Alaska

Tom and Maude Dull, General Delivery, Juneau, Alaska

Karl and Olga Aschenbrenner, General Delivery, Juneau, Alaska

Steve and Annie Stanworth, General Delivery, Juneau, Alaska

George and Lena Alfors, General Delivery, Juneau, Alaska

Anna Rosenberg, General Delivery, Juneau, Alaska

D. E. and Genevieve Fuller, General Delivery, Juneau, Alaska

Dolly Knudsen, General Delivery, Juneau, Alaska

Johnny Knudsen, General Delivery, Juneau, Alaska

Herb Knudsen, General Delivery, Juneau, Alaska

The B. M. Behrends Bank, a Corporation, Mortgagee, General Delivery, Juneau, Alaska  
all of whom are made defendants herein, and it is the desire of the United States of America to acquire all the right, title, or interest the above-named defendants have or may have in and to the land herein described. [24]

Sixth: That the B. M. Behrends Bank is a domestic corporation, duly organized and existing under and by virtue of the laws of the Territory of Alaska, home office Juneau, Alaska.

Seventh: The Attorney for the Petitioner herein further respectfully represents to the Court that the Secretary of War has determined, as the land is to be used in connection with the army transport service and the expansion of a military garrison and the utmost haste in expediting this project is vital to the successful prosecution of the war, immediate possession is necessary: That under and pursuant to the terms of the Second War Powers Act, Title 2, approved March 27, 1942 (Public Law 507-77th Congress), the United States has a right to take immediate possession herein of the land herein described, and

The Attorney further respectfully represents that certain adequate provision has been made for the payment of just compensation to the party or

parties entitled thereto of the lands or interest therein, herein sought to be condemned, by an appropriation of funds of the United States of America under an Act of Congress approved April 28, 1942 (Public Law 528-77th Congress).

Wherefore, Your Petitioner Prays This Honorable Court to ascertain and determine in the manner provided by law, the compensation or damages for the taking of the land herein to be condemned, to ascertain and determine the parties entitled to the sum awarded as just compensation for said land and upon payment to or into the registry of the Court for the use of the parties entitled of the sum adjudged to be the just compensation for the land condemned, and

To adjudge and decree that the title to the land herein described be vested in the United States in fee simple absolute, and to grant such other and further relief as may be lawful and proper as the nature of the case may require.

And your petitioner further prays that an order may be entered in this cause, providing, authorizing, and directing the United States of America, the Petitioner herein, to take immediate possession of each and all and various interests therein, as hereinabove more particularly set forth.

UNITED STATES OF  
AMERICA

By: WM. A. HOLZHEIMER

United States Attorney,  
First Division of Alaska. [25]

United States of America,  
Territory of Alaska  
Division Number One—ss.

Wm. A. Holzheimer, being first duly sworn on oath, deposes and says: That he is United States Attorney for the First Division, Territory of Alaska, and brings this suit by direction of the Attorney General of the United States; that he has read the foregoing petition, knows the contents thereof, and believes the same to be true.

WM. A. HOLZHEIMER

Subscribed and sworn to before me this 18th day of September, 1942.

[Seal]

P. D. McLEOD

Deputy Clerk of District  
Court, Territory of Alaska,  
Division #1

[Endorsed]: Filed September 19, 1942. [26]

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In the District Court for the District of Alaska,  
Division No. 1, at Juneau, Alaska

United States of America,  
District of Alaska,  
Division No. 1—ss:

CERTIFICATE

I, J. H. Walmer, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 27

pages of typewritten matter, numbered from 1 to 27, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record prepared in accordance with the praecipe of Appellant on file herein and made a part hereof, in Cause No. 4940-A, wherein James Miller, Peter Smith et al is Defendant-Appellant, and United States of America is Plaintiff-Appellee, as the same appears of record and on file in my office; and the said record is by virtue of an appeal and Citation issued in this cause and the return thereof in accordance therewith.

And I do further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certification, amounting to Eight and 85/100 Dollars has been paid to me by Counsel for Appellant.

In Witness Whereof I have hereunto set my hand and the seal of the above-entitled Court this 24th day of May, 1945.

[Seal]

J. H. WALMER,  
Clerk.

By J. W. LEIVERS,  
Deputy. [27]



[Endorsed]: No. 11067. United States Circuit Court of Appeals for the Ninth Circuit. James Miller, Jake and Marjorie Cropley, Frank and Lilly Edwards, Willie Peters, Jimmie Jack, David Willard, Herbert Mercer, Susie Michaelson, Mary Johnson, Lilly Yarquan, Edward N. and Cecelia Kunz, Jennie Klaney, Jessie Wilson, Jacob Yarkon, Bessie Visaya, Jimmie K. Hanson, Mary George, Paul Rudolph, William Kunz and Lilly Hoolis, Appellants, vs. United States of America, Appellee. Transcript of Record. On Appeal from the District Court for the Territory of Alaska, Division Number One.

Filed June 5, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

